

VZCZCXRO9988
RR RUEHGA RUEHQU RUEHVC
DE RUEHOT #0854/01 3091446
ZNR UUUUU ZZH
R 051445Z NOV 09
FM AMEMBASSY OTTAWA
TO RUEHC/SECSTATE WASHDC 0040
INFO ALL CANADIAN POSTS COLLECTIVE
RUEHFR/AMEMBASSY PARIS 0001

UNCLAS SECTION 01 OF 02 OTTAWA 000854

SENSITIVE
SIPDIS

E.O. 12958: N/A
TAGS: [PGOV](#) [PHUM](#) [CA](#)
SUBJECT: QUEBEC SCHOOL LANGUAGE LAW FAILS CONSTITUTIONALITY TEST

REF: MISSION CANADA DAR OCTOBER 23, 2009
MISSION CANADA DAR OCTOBER 29, 2009

11. (SBU) Summary: Canada's Supreme Court unanimously struck down a Quebec law that closed a loophole in allowing English-language education in the francophone province, finding that it was "excessive" and violated constitutional minority language rights. Signaling that it found the procedures -- and not the intent -- of the law unconstitutional, the court suspended the application of its judgment for one year to allow the Quebec provincial government to redraft the legislation. The law primarily affects recent immigrant families seeking an English-language foundation for their children in Quebec. Provincial leaders and political commentators have expressed frustration with the ruling, as the debate over the primacy of French in Quebec is largely over for the great majority of Quebecers and for both the federal and provincial governments. The decision will not turn the tide against the protection of French in Quebec and instead emphasizes the constitutionality of Quebec's language laws overall. End summary.

12. (U) Consulates General Quebec City and Montreal collaborated with Embassy on this cable.

L'etat, c'est fran????ais

13. (U) The Charter of the French Language, also known as Bill 101, defines French as the only official language of Quebec and designates French as the "language of instruction," while being "respectful of the institutions of the English-speaking community of Quebec and the ethnic minorities." Bill 101 nonetheless allows English-language public schooling for children who either have parents who attended English-language schools in Canada or who themselves (or their siblings) attended English-language schools in Canada. This language mirrors Section 23 of the Canadian Charter of Rights and Freedoms ("the Charter"), which protects minority language educational rights. The Charter recognizes the right to generational continuity of a language and defines the right to a public education in either French or English as a parental right for their children, based on the language of education of the parents.

14. (U) Newly immigrant families to Quebec, whose parents do not have the requisite English educational history in Canada, found a loophole in Bill 101 by sending one child briefly to a private English-language school ("bridging school") so that all the children would subsequently be eligible to attend publicly funded English schools. In 2002, the provincial government enacted Bill 104, which amended Bill 101 to "disregard" periods of attendance at a bridging school in determining whether a child is eligible to attend English public school. In 2005, 25 families, with the support of the Quebec English Language School Board Association,

sued to overturn Bill 104. Two provincial courts upheld the law, but, in 2007, the Quebec Appeals Court ruled against Bill 104.

The end does not justify the means but...

15. (U) In an unanimous decision on October 22, the Supreme Court upheld the ruling of the Quebec Appeals Court, finding that the objectives of Bill 101 and Bill 104 to protect the status of French as the official language of Quebec were "sufficiently important and legitimate" to justify a limit on Charter rights but that "the means do not constitute a minimal impairment of the constitutional rights" and thus are "excessive in relation to the seriousness of the problem" (ref a). The court repudiated attendance at a bridging school as "indicative of a genuine commitment" and therefore ruled that this alone was not enough to grant a child's parent the status of a minority language rights holder under the Charter. The ruling affects less than 1% of the student population in Quebec; however, the Supreme Court also noted that it did not "wish to deny the dangers" of bridging schools to circumvent Bill 101 and "restore the freedom to choose" the language of instruction in Quebec. The court suspended the effects of its ruling for one year "to enable Quebec's National Assembly to review the legislation" due to the "difficulties this declaration of invalidity may entail" to the preservation of French in Quebec

OTTAWA 00000854 002 OF 002

society.

Pas encore

16. (SBU) Quebec reaction to the ruling includes frustration and exasperation with yet another hurdle imposed on the province, especially when federal and provincial political parties, the majority of Quebecers, and the Supreme Court all agree that Quebec has the constitutional right to protect the primacy of French. Quebec Premier Jean Charest referred to the situation as "status quo" in light of the suspension of the judgment for one year and the narrowness of the decision. The ruling nonetheless gives hard-line separatists fodder to stoke the small but still smoldering fires of sovereignty, and some public commentary focused on the "threat" to the integrity of Quebec language laws. In the House of Commons, the New Democratic Party focused on this issue on its "Opposition Day" motion on October 28, despite its stated priorities for pension reform and employment insurance expansion. Drafted by the NDP's sole Quebec MP, the motion to support the primacy of French in Quebec for immigrants won unanimous approval by voice vote, ensuring that no MP of any party had to go on record (ref b). Consulate General contacts in both Montreal and Quebec City view this ruling as the latest in a long history of court battles over language issues in Quebec. Despite a brief flare of media attention, this issue falls far short of more pressing concerns in Quebec: the economy, H1N1, municipal elections, and public corruption. Canadian Human Rights Commission contacts emphasized privately to poloff that Section 23 of the Charter of Rights and Freedoms was drafted primarily to protect the rights of the French-speaking minority throughout Canada and that their protections under federal law were "more critical" than the rights of the English-speaking minority in Quebec.

17. (SBU) Comment: This Supreme Court decision will not turn the tide against the protections nationally or provincially for French as the official language of government, commerce, industry, and education in Quebec. It emphasizes the strong federal commitment to the status of Quebec as a fully francophone province, with the constitutional right to block attempts to circumvent provincial language laws. With the federal Liberals struggling to regain

support in Quebec, the NDP fighting to retain its one riding, and the Conservatives seeing no benefit to angering Quebec any further, there was little appetite among MPs to comment negatively on the ruling. The decision will nonetheless force the Charest government again to delve into language issues, a topic that can still inflame passions on both sides, to draft a new law to maintain the status quo. End comment.

JACOBSON